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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

**MOTION OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS FOR AN ORDER
AUTHORIZING THE FILING OF A
SUPPLEMENTAL OBJECTION UNDER
SEAL**

[No Hearing Requested]

The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) appointed
in the above-captioned chapter 11 cases, by its attorneys, Milbank LLP, hereby moves (the

1 “Motion”) for entry of an order authorizing the Creditors’ Committee to file under seal portions of
2 its supplemental objection (the “Supplemental Objection”) to the Debtors’ *Motion Pursuant to 11*
3 *U.S.C. §§ 363 and 105(a) and Fed. R. Bankr. P. 6004 Authorizing Debtors to Purchase Directors*
4 *and Officers Insurance* (the “D&O Motion”) [Docket No. 2471], which supplemental objection is
5 filed contemporaneously herewith.¹ This Motion is further accompanied by the declaration of
6 Gregory A. Bray. In support of the Motion, the Creditors’ Committee respectfully represents as
7 follows:

8 **PRELIMINARY STATEMENT**

9 1. The Creditors’ Committee seeks authority to file portions of its Supplemental
10 Objection to the Debtors’ D&O Motion under seal.² The Creditors’ Committee took the deposition
11 of Janaize Markland, the Debtors’ declarant in support of the D&O Motion, on July 3, 2019. The
12 Debtors designated the transcript of the deposition as “confidential” pursuant to the *Order*
13 *Governing Discovery by and Among Debtors, Official Committee of Unsecured Creditors, and*
14 *Official Committee of Tort Claimants* entered by the Court on July 1, 2019 (“Protective Order”)
15 [Docket No. 2807]. The Protective Order governs the production, review, disclosure, and handling
16 of any information exchanged by and among the Official Committee of Tort Claimants (the
17 “TCC”), the Creditors’ Committee, and the Debtors in these chapter 11 cases.

18 **JURISDICTION AND VENUE**

19 2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334,
20 the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24
21 (N.D. Cal.), and Bankruptcy Local Rule 5011-1(a).

22 3. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

25 ¹ Capitalized terms not defined herein have the meanings ascribed to them in the D&O
26 Motion.

27 ² On July 2, 2019, the Creditors’ Committee filed a substantially similar motion to file
28 portions of its initial objection to the D&O Motion under seal, as the objection referenced
materials produced by the Debtors which the Debtors had designated as confidential.
This court granted that motion on July 2, 2019. *See Order Granting Motion to File*
Documents Under Seal [Docket No. 2840].

1 4. The bases for the relief requested in the Motion are §§ 105(a) and 107(b) of the
2 Bankruptcy Code and Bankruptcy Rule 9018.

3 5. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4 **BACKGROUND**

5 6. The Debtors filed the D&O Motion on June 10, 2019 requesting, among other
6 things, the immediate funding of \$50 million to secure a new D&O insurance policy (the “New
7 Policy”).

8 7. The Creditors’ Committee sought to take the deposition of Janaize Markland, the
9 Debtors’ declarant, prior to the D&O Motion’s July 2, 2019 objection deadline. The parties,
10 however, were unable to schedule a mutually agreeable time before the objection deadline.

11 8. As such, the Creditors’ Committee filed its objection to the Debtors’ D&O Motion
12 on July 2, 2019. *See Objection of the Official Committee of Unsecured Creditors to the Debtors’*
13 *Motion Pursuant to 11 U.S.C. §§ 363 and 105(a) and Fed. R. Bankr. P. 6004 Authorizing Debtors*
14 *to Purchase Directors and Officers Insurance* (the “Objection”) [Docket No. 2835]. The next day,
15 the Creditors’ Committee deposed Ms. Markland.

16 9. The Creditors’ Committee’s Supplemental Objection incorporates new information
17 learned through Ms. Markland’s deposition testimony.

18 10. The Debtors designated the testimony of Ms. Markland as “confidential” under the
19 Protective Order. The Supplemental Objection references certain portions of Ms. Markland’s
20 testimony. On this basis, the Creditors’ Committee seeks authority to file portions of its
21 Supplemental Objection that reference the testimony under seal.

22 **BASIS FOR RELIEF REQUESTED**

23 11. The Court “may issue any order, process, or judgment that is necessary or
24 appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under Section 107(b) of
25 the Bankruptcy Code: “On request of a party in interest, the bankruptcy court *shall*, and on the
26 bankruptcy court’s own motion, the bankruptcy court may—(1) protect an entity with respect to a
27 trade secret or confidential research, development, or commercial information.” 11 U.S.C.
28 § 107(b) (emphasis added).

12. The Bankruptcy Rules set forth the requirements to obtain a protective order to file documents under seal. “On motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018. In addition, Civil Local Rule 79-5(e) for the United States District Court for the Northern District of California permits a party to file under seal documents designated as confidential subject to a protective order. The request for seal must be narrowly tailored to sealable materials. Civil Local Rule 79-5(d).

13. Because the Creditors' Committee has redacted only the portions of its Supplemental Objection that reference or are otherwise based upon deposition testimony that, according to the Debtors, constitutes "confidential" information, the relief requested herein falls within the scope of 107(b) and the other authorities cited above. The Court should grant the Creditors' Committee's request.

CONCLUSION

Based on all of the foregoing, the Creditors' Committee respectfully requests that the Court grant the Motion and allow the Creditors' Committee to file under seal those portions of its Supplemental Objection that reference or are based upon deposition testimony.

DATED: July 5, 2019

MILBANK LLP

/s/ Gregory A. Bray
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